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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)		Application No.	09/821,504
		Filing Date	March 28, 2001
		First Named Inventor	Brian N. Sawyer
		Art Unit	2173
		Examiner Name	Raymond J. Bayerl
Total Number of Pages in This Submission	18	Attorney Docket Number	3801P199

ENCLOSURES (check all that apply)		
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Thomas M. Coester, Reg. No. 39,637 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Signature	<i>Thomas Coester</i>
Date	December 21, 2004

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Typed or printed name	Lillian E. Rodriguez		
Signature	<i>Lillian E. Rodriguez</i>	Date	December 21, 2004



# FEE TRANSMITTAL for FY 2005

Patent fees are subject to annual revision.

## Complete if Known

Application Number	09/821,504
Filing Date	March 28, 2001
First Named Inventor	Brian N. Sawyer
Examiner Name	Raymond J. Bayerl
Art Unit	2173
Attorney Docket No.	3801P199

☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$)  
500.00

## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☒ None ☐ Other (please identify): \_\_\_\_\_

☐ Deposit Account Deposit Account Number: 02-2666 Deposit Account Name: Blakely, Sokoloff, Taylor & Zafman LLP

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## FEE CALCULATION

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
2053	130	2053	130	Non-English specification	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1,020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1,080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	
1402	500	2402	250	Filing a brief in support of an appeal	500.00
1403	1,000	2403	500	Request for oral hearing	
1451	1,510	2451	1,510	Petition to institute a public use proceeding	
1460	130	2460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
1809	790	1809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
Other fee (specify) _____					
SUBTOTAL (2)					(500.00)

## SUBMITTED BY

## Complete (if applicable)

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Signature	<i>Thomas Coester</i>	Date	12/21/04		



PATENT  
Attorney's Docket No. 3801P199

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
Brian N. Sawyer	)	Examiner: Raymond J. Bayerl
Serial No. 09/821,504	)	Art Group: 2173
Filed: March 28, 2001	)	
For: GRAPHICAL USER INTER-	)	
FACE FOR FILTERING A	)	
POPULATION OF ITEMS	)	
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Alexandria, VA 22313-1450

**APPEAL BRIEF**

Dear Sir:

Appellant, (hereinafter "Appellant") submits the following Appeal Brief pursuant to 37 C.F.R. § 41.37 for consideration by the Board of Patent Appeals and Interferences. Appellant also submits herewith a check in the amount of \$500.00 to cover the cost of filing the opening brief as required by 37 C.F.R. § 1.17(f). Please charge any additional amount due or credit any overpayment to deposit Account No. 02-2666.

12/28/2004 RFEKADU1 00000034 09821504

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## **I. REAL PARTY IN INTEREST**

Brian N. Sawyer, the party named in the caption, assigned his rights to the invention disclosed in the subject application through an Assignment recorded on March 28, 2001 at reel and frame 011672/0590 to Stockjungle.com, 5750 Wilshire Boulevard, Suite 560, Los Angeles, California 90036. Stockjungle assigned its rights to the invention disclosed in the present application through an assignment recorded on January 7, 2004 at reel and frame 014860/0811 to Credit Managers Association of California, 40 East Verdugo Avenue, Burbank, California 91502. Credit Managers Association of California assigned its rights to the invention through and assignment recorded on January 7, 2004 at reel and frame 014860/0792 to Michael Witz, 1119 Alvira Street, Los Angeles, California 90035. Appellant notes that a request for correction to the recordation sheet was filed on August 3, 2004 to correct a misspelling of the assignee's name. Therefore, Michael Witz is the real party in interest.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this Appeal.

## **III. STATUS OF CLAIMS**

Claims 1-17 are pending in the application. The Examiner has rejected claims 1-7, 10-15 and 17. Appellant appeals the rejection of claims 1-7, 10-15 and 17.

## **IV. STATUS OF AMENDMENTS**

An amendment to claims 1 and 12 was submitted in a Response to Final Office Action mailed September 2, 2004. An Advisory Action was mailed October 6, 2004 wherein the

amendment to the claims was entered. No other amendments were submitted after the Final Office Action mailed July 2, 2004.

## **V. SUMMARY OF THE CLAIMED SUBJECT MATTER**

Independent claims 1 and 12 recite a method claim and a machine readable medium having instructions stored therein which when executed cause a processor to perform a set of operations, respectively. These claims include the elements of "defining a library of criteria to be used in filtering a population of items to identify items of interest, each criteria in having a graphical representation." This library of criteria may be preset and defined by the system or defined by a user or other members of an online community. These criteria may be stored in a database and made available to the user via a graphical interface. See paragraph [0017], [0019] and Figure 2, Blocks 206 and 210.

These claims also include the elements of "receiving a selection of at least one of the criteria to be applied to the population as a filter." This indication may be received through the user interface by a user selecting a criteria that may be represented as a puzzle piece or similar graphical representation. See paragraphs [0019], [0020] and block 214 of Figure 2. Further, these claims include the elements of "accepting an indication of a tier of the filter to which a selected criterion is to be associated." The filter is a user interface having multiple level or 'tiers'. Criteria may be added to a tier by a user using an input device for pointing and clicking, dragging and dropping or similar methods. See paragraph [0020] and Figure 2, block 214, and Figure 3, reference numbers 340-366.

Claims 1 and 12 include the elements of "identifying a list of items of interest satisfying a current set of criteria defining the filter." As each criteria is added to the filter, an updated list of items that meet the criteria are generated in a display. See paragraphs [0020], [0021] and Figure 2, block 218. The claims also include the element of "displaying a graphical representation of the

filter while the filter is constructed." This is shown in Figure 3 and discussed in paragraphs [0019] and [0020].

## **VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1-4, 7, 10-15 and 17 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,668,966 issued to Ono, et al. (hereinafter "Ono"). Claims 5 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ono.

## **VII. ARGUMENT**

### **1. Rejection Under 35 U.S.C. § 102**

#### **A. Claims 1, 4, 10, 12 and 15**

Claims 1-4, 10-15 and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,668,966 issued to Ono, et al. (hereinafter "Ono"). Appellant respectfully disagrees for the following reasons.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). In regard to claims 1 and 12, these claims include the elements of "defining a library of available criteria" and "accepting an indication of a tier of the filter to which a selected criterion is to be associated." The Examiner cites the Abstract and col. 4, lines 53-59 of Ono as teaching "defining a library of available criteria." Appellant has reviewed the cited sections of Ono and has been unable to discern any part therein that teaches defining a library of available criteria. Examiner states in the Advisory Action mailed October 6, 2004 that Ono "creates a stored collection of reusable criteria, which anticipate the claimed sourcing from a 'library'." However, the Examiner has declined to clarify where in Ono this reusable collection is taught. Rather, Appellant believes Ono teaches a system where primitive predicates are created using a predicate creation system. See col. 10, lines 21-24 of Ono. The predicate creation system requires the user to select a "create primitive" command in a menu. The

"create primitive" command allows users to input attributes such as search conditions or key words into an attribute field to create a predicate to be displayed as an icon. See col. 10, lines 47-64 of Ono. Thus, Appellant has been unable to discern any part of Ono that teaches to define a library of available criteria. Rather, the cited sections of Ono appears to require that a user create each predicate individually using this creation system by "input through a keyboard." See Ono, col. 12, line 2. Thus, the system of Ono requires a user to create predicates by defining the predicates and does not offer a set of predicates predefined in a library. While the predicates in Ono may be stored in the "organizational storage subsystem," this does not constitute defining a library of available criteria as claimed. As noted above, predicate creation is by user direction and the Examiner has provided no identification of a teaching by Ono of a predetermined set of predicates. Further, the Examiner has not indicated any part of Ono that teaches a user utilizing the system to create a library of a available criterion claimed in claim 1 or a set of instructions that direct a machine to produce such a library as claimed in claim 12.

Also, the Examiner appears to give no meaning to the term 'available criteria' in these claims. The process of creating a primitive or even a set of primitives does not constitute forming a library of available criteria. There is no teaching in Ono that draws any relationship between a predicate that may be defined by the system and any available criteria much less a library of such criteria. Predicates defined by a user according to Ono may create primitives with no regulation criteria related to a data source to be searched. The Examiner has not indicated and Appellant has been unable to discern any part of Ono that teaches collecting the user defined predicates into a library. Therefore, Appellant believes Ono does not expressly teach defining a library of criteria. Appellant notes the Examiner has not argued that he is relying on the inherent teachings in Ono.

The Examiner cites Figure 4B in support of his assertion that an indication of a tier of the filter is taught by Ono. The Examiner asserts that Ono teaches choosing a particular composite predicate in which to place a simple predicate from among those shown in a tree structure of Figure 4B. This description of Figure 4B is inaccurate. Figure 4B is merely a conceptual representation of a composite predicate and it is not a graphical representation shown to a user. See col. 9, lines



28-34 of Ono. Rather, the graphical representation taught by Ono is a nested folder structure shown in Figure 4C. See col. 9, lines 35 and 36. Appellant has been unable to discern any part of Ono that teaches a tiered structure presented as a graphical representation to a user such that it might be used to indicate a placement of a primitive predicate in a composite predicate. Rather, Ono states clearly that the nested folder structure of Figure 4C is displayed on a desktop to a user. See col. 9, lines 35 and 36 of Ono. A nested folder structure as graphically represented to a user is not a tiered structure. Thus, Ono does not teach *accepting an indication of a tier* of the filter to which a selected criterion is to be associated because a user does not interact with a tiered structure and therefor cannot provide an indication in a tiered structure for the program to accept as claimed. Rather, Ono teaches primitive predicates that are constructed into composite predicates and logical expressions by placing predicates in folders which represent logical operations. See col. 8, lines 4-15 of Ono. Thus, the user interacts with an interface of *nested* folders not a tiered structure and the Examiner has not established that Ono expressly teaches each of the elements of claims 1 and 12. Also, the Examiner has not argued that these elements are inherently taught by Ono. Therefore, the Examiner has not established a case of anticipation for claims 1 and 12. Accordingly, it is requested that the anticipation rejection of claims 1 and 12 be overturned.

In regard to claims 4, 10 and 15, these claims depend from independent claim 1 and 12 and incorporate the limitations thereof. Thus, at least for the reasons mentioned in regard to claims 1 and 12, these claims are not anticipated by Ono. Accordingly, it is requested that the anticipation rejection of these claims be overturned.

#### **B. Claims 2 and 13**

Claims 2 and 13 depend from independent claims 1 and 12 and incorporate the limitations therein. Thus, at least for the reasons mentioned above in regard to these claims 1 and 12, these are not anticipated by Ono. In addition, these claims include the elements of "the selected criterion is merged with a graphical representation of the indicated tier in the graphical representation of the filter." As set forth above, Appellants do not believe Ono teaches a filter in the graphical form of a set of tiers.

Further, Appellants do not believe Ono teaches merging selected criteria with a graphical representation of a tier. Rather, the primitive predicates defined by a user of Ono are turned into individual icons that may be placed in a set of nested folders to form composite predicates. The primitive predicates do not merge with the nested folders. They remain discrete items. See Ono, col. 11, lines 4-51. Thus, the nested folder systems of Ono does not teach *merging* a selected criterion with a graphical representation of a filter. Placing an icon in a folder does not merge the icon and folder just as placing an object in a canister does not merge the item and canister. Thus, Ono does not teach each of the elements of claims 2 and 13. Therefore, claims 2 and 13 are not anticipated by Ono and are separately patentable. Accordingly, it is requested that the anticipation rejection of claims 2 and 13 be overturned.

#### **C. Claims 3 and 14**

In regard to claims 3 and 14, these claims depend from claims 1 and 12 and incorporate the limitations therein. Thus, at least for the reasons mentioned in regard to claims 1 and 12, these claims are not anticipated by Ono. Further, these claims include the elements of "applying an AND to those criteria residing on different tiers of the filter." Appellant has been unable to discern and the Examiner has not specifically identified any part of Ono that teaches these elements. Rather, Ono teaches applying an AND to predicates in the same folder. See Figure 13 of Ono and col. 11, lines 4-51. Also, the Examiner has not identified any part of Ono that teaches a graphical display of a *tier*. Thus, the Examiner has failed to establish Ono teaches applying an AND across different tiers. Appellant does not believe that the Examiner has established that Ono expressly or inherently teaches an AND operation applied across different tiers. Therefore, claims 3 and 14 are not anticipated by Ono and are separately patentable. Accordingly, it is requested that the anticipation rejection of claims 3 and 14 be overturned.

#### **D. Claims 7 and 17**

Claims 7 and 17 depend from claims 1 and 12 and incorporate the limitations thereof. Thus, at least for the reasons mentioned in regard to claims 1 and 12, these claims are not anticipated by Ono. In addition, these claims include the elements of "receiving an indication of

one of the tiers of the filter . . . " and "satisfying the filter at the indicated tier." The Examiner argued in the Final Office Action that these elements are taught because "the intermediate composite predicate terms in Ono may be individually manipulated and used to search a database." However, using a primitive from a composite predicate does not constitute indicating a tier of a filter. Rather, the primitive or other portion of a composite in Ono is removed from the overall composite and dragged onto a database as a separate item. See Ono, col. 13, lines 16-59. Thus, Ono does not teach each of the elements of claims 7 and 17. Therefore, claims 7 and 17 are not anticipated by Ono and are separately patentable. Accordingly, it is requested that the anticipation rejection of claims 7 and 17 be overturned.

## **2. Rejection Under 35 U.S.C. § 103**

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ono. Appellant respectfully disagrees for the following reasons.

To establish a *prima facie* case of obviousness, the Examiner must show that the cited reference teaches or suggests each of the elements of the claims. See *In re Vaeck*, 20 USPQ 2d 1438 (Fed. Cir. 1991). In regard to claims 5 and 6, these claims include the elements of "a tally of the list of items of interest" and "displaying a tally of the list." The Examiner admits that Ono does not explicitly teach a numerical tally. In fact, the Examiner has not provided any citation to any part of Ono on which to base his rejection. Rather, the Examiner proposes a modification to include tallying of listed items without any support from the cited reference. The Examiner argues that it would have been obvious to provide such a tally so that "a user will have a better appreciation of the magnitude of what the 'filter' has found." However, the Examiner provides no support from any reference for this assertion. Appellant has been unable to discern any part of Ono that teaches the benefit of the use of a tally. Also, the Examiner has not established that such a modification would be apparent or known to one of ordinary skill in the art. Therefore, the Examiner has failed to establish that the cited references teaches or suggests each of the elements of claims 5 and 6 or that a motivation to modify the cited reference is taught or suggested by Ono.

Therefore, the Examiner has failed to establish a *prima facie* case of obviousness for claims 5 and 6. Accordingly, it is requested that the obviousness rejection of claims 5 and 6 be overturned.

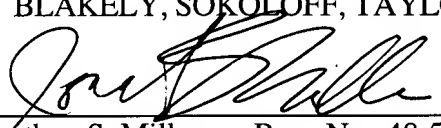
### **VIII. CONCLUSION AND RELIEF**

Accordingly, it is submitted that the rejections of claims 1-7, 10-15 and 17 based on 35 U.S.C. §§ 102 and 103 be overturned.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated: 12/21, 2004

  
Jonathan S. Miller, Reg. No. 48,534

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#### **CERTIFICATE OF MAILING:**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Virginia, VA 22313-1450, on December 21, 2004.

  
Lillian E. Rodriguez

12-21-04  
December 21, 2004

## **IX. APPENDIX**

The claims involved in this Appeal are as follows:

1. (Previously Presented) A method comprising:  
defining a library of available criteria to be used in filtering a population of items to identify items of interest, each criterion having a graphical representation;  
receiving a selection of at least one of the criteria to be applied to the population as a filter;  
accepting an indication of a tier of the filter to which a selected criterion is to be associated;  
identifying a list of items of interest satisfying a current set of criteria defining the filter; and  
displaying a graphical representation of the filter while the filter is constructed.
2. (Original) The method of claim 1 further comprising:  
including the selected criterion into the indicated tier such that a graphical representation of the selected criterion is merged with a graphical representation of the indicated tier in the graphical representation of the filter.
3. (Original) The method of claim 1 further comprising:  
applying a Boolean OR to those criteria on a same tier of the filter; and  
applying a Boolean AND to those criteria residing on different tiers of the filter.
4. (Original) The method of claim 1 further comprising:  
displaying a representation of the list of items of interest.
5. (Original) The method of claim 4 wherein identifying comprises:  
computing a tally of the list of items of interest.
6. (Original) The method of claim 5 further comprising:

displaying the tally of the list of items of interest.

7. (Original) The method of claim 1 further comprising:  
receiving an indication of one of the tiers of the filter;  
identifying, in response to receiving, a group of items satisfying the filter at the indicated tier;  
displaying the group of items.
8. (Original) The method of claim 1 wherein the population comprises a group of securities.
9. (Original) The method of claim 1 wherein the library of available criteria comprises criteria derived from a community of investors.
10. (Original) The method of claim 1 wherein the library of available criteria comprises user customizable filter criteria.
11. (Original) The method of claim 1 wherein the library of available criteria comprises predefined criteria.
12. (Previously Presented) A machine readable medium having instructions stored thereon which when executed by a processor cause the processor to perform operations comprising:  
defining a library of criteria to be used in filtering a population of items to identify items of interest, each criterion having a graphical representation;  
receiving a selection of at least one of the criteria to be applied to the population as a filter;  
accepting an indication of a tier of the filter to which a selected criterion is to be associated;  
identifying a list of items of interest satisfying a current set of criteria defining the filter; and  
displaying a graphical representation of the filter while the filter is constructed.

13. (Original) The machine readable medium of claim 12 in which the instructions cause the processor to perform operations further comprising:

including the selected criterion into the indicated tier such that a graphical representation of the selected criterion is merged with a graphical representation of the indicated tier in the graphical representation of the filter.

14. (Original) The machine readable medium of claim 12 in which the instructions cause the processor to perform operations further comprising:

applying a Boolean OR to those criteria on a same tier of the filter; and

applying a Boolean AND to those criteria residing on different tiers of the filter.

15. (Original) The machine readable medium of claim 12 in which the instructions cause the processor to perform operations further comprising:

displaying a representation of the list of items of interest.

16. (Original) The machine readable medium machine readable medium of claim 12 wherein the population comprises a group of securities.

17. (Original) The machine readable medium of claim 12 in which the instructions cause the processor to perform operations further comprising:

receiving an indication of one of the tiers of the filter;

identifying, in response to receiving, a group of items satisfying the filter at the indicated tier;

displaying the group of items.